United States Court of Appeals

for the Second Circuit

PETITIONER'S BRIEF

NO. 76-4051

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

ADAMS IRON WORKS, INC.,

Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

STATEMENT OF THE ISSUES PRESENTED

1. Whether substantial evidence on the record as a whole supports the Board's finding that the Company violated Section 8(a)(5), (3) and (1) of the Act by failing to reinstate four unfair labor practice strikers to their former jobs immediately after their unconditional application to return to work.

2. Whether substantial evidence on the record as a whole supports the Board's finding that the Company violated Section 8(a)(5) and (1) of the Act by refusing to honor and comply with the terms of the collective-bargaining agreement executed by its agent on May 29, 1974, and an agreement to reinstate employee John Mazzanti.

STATEMENT OF THE CASE

This case is before the Court upon application of the National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*), for enforcement of its order (A. 25-28, 30-33)[1] issued against Adams Iron Works, Inc. (hereinafter the "Company"), on October 23, 1975. The Board's Decision and Order is reported at 221 NLRB No. 24. This Court has jurisdiction over the proceedings, the unfair labor practices having occurred in Brooklyn, New York, where the Company is engaged in fabricating and installing ornamental iron railings and related products.

I. THE BOARD'S FINDINGS OF FACT

A. Background: Prior Proceedings

The Company is a small ironworking shop in Brooklyn, New York, with fewer than ten employees (A. 4; 156). The president and sole stockholder is Joseph Bonanno, a naturalized American citizen now 40 years of age who came to this country when he was 23 (A. 4; 174). In 1964,

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[1] "A." references are to the printed appendix. Those preceding a semicolon are to the findings of the Board; those following are to the supporting evidence.

the Company signed its first contract with the Union[2] (A. 4; Tr. 175). Its last contract with the Union expired on June 30, 1973 after extended fruitless negotiations between the parties (A. 4, 63; 88, 177). On July 2, 1973, the Union struck and commenced picketing the Company's shop (A. 4, 66; 158, 161, 177). The picketing continued until late in May 1974 (A. 4; 89, 137).

In October 1973, a charge was filed with the Board alleging that the Company had engaged in conduct violative of Section 8(a)(5) and (1) of the Act (A. 4, 57). A complaint issued in December 1973 in that case[3] (hereafter "*Adams I*") and, after a hearing on March 26, 1974, the Administrative Law Judge issued a decision sustaining the allegations of the complaint (A. 4, 72-73). The Company filed no exceptions to this decision and on April 29, 1974, the Board adopted his findings and ordered the Company to take the action set forth in his recommended order (A. 4, 79). This Court granted summary enforcement of the Board's order on April 14, 1975.

In *Adams I*, the Board held that the Company had violated Section 8(a)(5) and (1) of the Act by (1) insisting on a clause in any new contract that the contract coverage be limited to no more than three employees regardless of how many were employed in the appropriate unit[4] and (2)

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[2] Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO.

[3] Board Case No. 29-CA-3596.

[4] The Board found that all production and maintenance employees, including plant clericals at the Company's plant and excluding office clericals, guards and supervisors, constituted a unit appropriate for the purpose of collective bargaining (A. 4, 72).

by insisting that the Union assure the Company that it would not utilize the grievance procedure of the contract to protest the discharge of three employees who were terminated in June 1973 (A. 5, 73). The Board found that the strike, described *supra*, was an unfair labor practice strike, caused, at least in part, by the Company's insistence on illegal conditions for executing a renewal contract with the Union (A. 5-6, 73). Accordingly, the Board's order requires, *inter alia*, that the Company reinstate, upon their unconditional application, all employees who went on strike (A. 6, 75).

B. Sequence of Events in the Instant Case

Late in March 1974, Union President William Colavito met with Jack D'Angelo at a coffee shop not far from the Company's plant (A. 6, 88, 89, 92, 93-94, 120). D'Angelo described himself as a friend of Bonanno and stated that he "had a piece of the business" (A. 6; 94-95). He told Colavito that he wanted to explore the possibility of settling the strike which was still in progress, explaining that Bonanno was absent from the meeting because he was of a very volatile temperament and therefore D'Angelo thought it would be best for Bonanno to remain out of the initial discussions (A. 6; 95).

Colavito told D'Angelo that the Union would be willing to make some concessions because the Company had a small shop and because the strike had been in progress for such an extended period of time (A. 6; 95). Accordingly, Colavito told D'Angelo: (1) while the new contract for the industry provided for double time on Friday and Saturday, the Union would agree to only time and a half for these days and (2) while the new contract restricted the number of apprentices or laborers to one for every six journeymen and prohibited laborers from using tools, the

Union would allow the number of laborers to constitute 50 percent of the workforce and would remove the prohibition against laborers' handling tools (A. 6-7; 95-97). D'Angelo accepted these changes and concluded the meeting by indicating that he would keep in touch with Colavito and telephone the Union to arrange another meeting (A. 7; 98).

In late March, shortly after the issuance of the Administrative Law Judge's decision in *Adams I*, the Union contacted Richard Gaba, counsel of record for the Company in that proceeding, and arranged for a meeting (A. 7; 98). Soon thereafter, Colavito received a telephone call from D'Angelo, who said that he also would attend (A. 7; 98).

The meeting was held at the Holiday Inn at LaGuardia Airport on May 8 (A. 7; 98). In attendance for the Union were Colavito and Vice President Antonio Schifano (A. 7; 98-99). Present for the Company were Bonanno, D'Angelo, and Joel Schonfeld, an attorney and friend of D'Angelo (A. 7; 99, 130). Attorney Gaba arrived some time later (A. 7; 99, 101-102). Bonanno told those present that he would wait in the lobby of the motel until Gaba arrived (A. 7; 99, 141, 187). In the meantime, the Union representatives, along with D'Angelo and Schonfeld, departed for the motel coffee shop where they engaged in an extended discussion of the Company's problems (A. 7; 99, 131-132).

D'Angelo asked if the Union would insist on the strikers' being reinstated, and the Union representatives answered in the affirmative (A. 7; 100). D'Angelo then asked if the Company could hire some new men and Colavito told him that that would be possible only after the strikers had been called back to work; if the Company needed any additional employees it would have to secure them through the Union's hiring hall (A. 7-8; 100). Colavito again summarized the Union's willingness to make the concessions on overtime and on the use of laborers or apprentices

which had been discussed in March (A. 8; 100-101). D'Angelo told him to incorporate these concessions into the proposed contract and to give copies to Attorney Schonfeld (A. 8; 101). D'Angelo promised to discuss the matter with Bonanno and then contact the Union officials about another meeting (A. 8; 101).

At this point, the Union officials, along with D'Angelo and Schonfeld, left the coffee shop and went to the motel lobby (A. 8; 102, 132). There they found Gaba and Bonanno (A. 8; 102, 132). Bonanno then took the Union representatives back to the coffee shop and told them that Gaba wanted to talk with them (A. 8; 102, 132-133, 180-181). Bonanno thereupon initiated a tearful scene in which he exclaimed that he could not survive with a shop in which all the workers had to be covered by a union contract (A. 8; 102, 133). Gaba, however, cut short this emotional outburst with a pointed reference to the Board's recent decision on that issue and said, "We can't do anything about that anymore" (A. 8; 102, 133). Gaba then suggested that they begin a study of the proposed contract section-by-section (A. 8; 102, 124, 133). Colavito immediately objected that the Union had already done that with D'Angelo earlier that very morning and that he would not deal with two sets of negotiators (A. 8; 103, 124, 133). At this point, Gaba volunteered to withdraw and Bonanno acquiesced with the statement to the Union officials, "Okay you work it out with Jack [D'Angelo]" (A. 8; 103, 133, 181). They then returned to the lobby where they rejoined D'Angelo and Schonfeld (A. 8; 103, 133). Bonanno thereupon reiterated to the Union officials, "Look, work it out with Jack [D'Angelo]" (A. 8-9; 103). At that point, D'Angelo suggested to the Union's representatives, "Get those contracts to Schonfeld and as soon as [we] have a chance to look it over we will have another meeting" (A. 9; 103). Schonfeld then gave D'Angelo his card and the meeting was concluded (A. 9; 103).

Colavito complied with D'Angelo's request and shortly after the meeting on May 8, Schifano brought copies of the Union's proposal to Schonfeld's office (A. 9; 104, 134-135). About two weeks later, Colavito by chance met Schonfeld in the lobby of the building where the lawyer had his office and Schonfeld told him ". . . everything looked all right, the [only] problem was getting together with the parties because he was extremely busy" (A. 9-10; 106-107).

On May 29, 1974, Colavito and Schifano met again with D'Angelo and Schonfeld at the Holiday Inn (A. 10; 107, 124, 135, 144). Colavito asked whether Bonanno would participate and D'Angelo responded, "Joe won't be here" (A. 10; 110, 137). He added, in the shop owner's absence, "I'm going to sign, I'm a partner" (A. 11; 110).

D'Angelo began with a discussion of further objections which he said Bonanno had raised to the Union's proposed contract (A. 10; 107-108). One related to a provision which required that the employer have a working foreman and another to the shortness of the agreement which, by its terms, would expire on June 30, 1975 (A. 10; 107-108). D'Angelo protested that the Company could not afford to hire a working foreman and asked that the Union allow Bonanno to give himself that designation (A. 10; 108, 135). Colavito and Schifano agreed to this change (A. 10; 108). They further agreed to extend the term of the agreement from June 30, 1975, to June 30, 1977 (A. 10; 108-109, 135-136). The Union representatives also reaffirmed their willingness to incorporate the changes on overtime and the modification of the rule on apprentices and laborers which had been discussed on May 8 (A. 10; 204-207). D'Angelo again raised the question whether all the strikers would have to be rehired and Colavito reiterated that this would be necessary in order for the Company to comply with the Board's decision in *Adams I* (A. 10; 109). Colavito also insisted that the Company recall John Mazzanti, an employee who

had been discharged some time in June 1973 for reasons unrelated to the strike, and D'Angelo agreed that the Company would take him back (A. 30, 14; 109, 135). Before concluding the meeting, on May 29, Colavito wrote in the additional concessions to which the Union had agreed (A. 10-11; 109-110).[5]

At the conclusion of the meeting, Colavito signed the contract as president of the Union (A. 11; 110). D'Angelo asked whether he could sign the instrument and Schonfeld answered in the affirmative (A. 11; 110, 137). Thereupon, D'Angelo wrote his name over a line that was designated by the term "Person authorized to sign" (A. 11; 110, 137).

The Union removed its pickets immediately after the contract was signed (A. 11; 137). On June 3, the following Monday morning, Union Representative Schifano, accompanied by former employee John Mazzanti, appeared at the Company's premises (A. 11; 138). They were met by Bonanno who demanded an explanation for their presence (A. 11; 138). Schifano said Mazzanti was returning to work according to their agreement (A. 11; 138). Bonanno's response was, "We don't have no agreement. . . . The kind of contract that that guy [D'Angelo] signed . . . I could have gotten myself, I didn't need him" (A. 11-12; 138). Bonanno then revived his earlier contention that his business could not survive if the Union had the right to bargain collectively for all his employees (A. 12; 138). Bonanno closed the discussion with the statement that he had discharged Attorney Gaba and that the Union would soon receive a letter from his new lawyer (A. 12; 139).

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[5] The draft which Colavito had sent to Schonfeld prior to this conference incorporated the May 8 concessions on overtime and on the required ratio of laborers and apprentices to journeymen (A. 10; 105). The additional concessions made at the May 29 meeting included the Union's acceding to Bonanno's role as a working foreman, setting the effective date of the contract at May 29, 1974 and extending the term of the agreement to June 30, 1977 (A. 10-11; 109-110).

Shortly thereafter, in a letter dated June 11, 1974, the Company's new attorney, John Ferlaino, informed the Union that D'Angelo had acted without authority in executing the contract and that, consequently, the agreement was not binding on the Company (A. 12; 54). The letter also invited the Union to contact Ferlaino if it wished to "discuss union matters" (A. 54).

Pursuant to this letter, on June 26, Colavito and Schifano met at the Company's office with Bonanno and attorney Ferlaino (A. 12; 113-114, 139). Bonanno reiterated that he could not operate his shop if all the employees had to be in the unit, that he could not have more than half his employees at most in the Union, and that D'Angelo had no authority to sign a contract (A. 12; 114, 125-126, 182). Colavito protested that the Union felt that it had a contract and that it had negotiated in good faith and made concessions (A. 12-13; 114, 126, 139). He added that as to any further negotiations, the Union would consider some additional minor concessions, but that it would not undertake to begin negotiations *ab initio* (A. 12-13; 114, 139-140, 182). Counsel for the Company concluded the meeting with the promise that after he reviewed the contract, he would contact the Union (A. 13; 114).

In a letter dated July 1, 1974, Attorney Ferlaino wrote the Union that his client (A. 13; 55, 114-115):

> finds it impossible to consider the contract. If you are disposed to offer substantial and far-reaching modifications in the benefits and also wage rates, and other items, then we are disposed to discuss . . . same with you.

There was no further contact between the parties subsequent to the date of this letter (A. 13; 127, 183). At no time since May 29 has the Company honored the contract which D'Angelo executed on that date (A. 13; 115, 140).

As noted above, the Union's picketing was discontinued on May 29 (A. 13; 89). In a letter dated June 13, 1974, the Union, on behalf of the strikers, made an unconditional application for the reinstatement, *inter alia*, of Antonio Cirillo,[6] Gaspare Santamaria, T. Gibaldi, Vito Chimenti,[7] and John Mazzanti (A. 13-14; 56).[8] Former employees Cirillo and Santamaria were reinstated the week ending August 2, 1974, and the week ending September 20, 1974, respectively (A. 14; 162, 163). The Company has not offered employment to former employees Gibaldi and Chimenti (A. 14; 116).

II. THE BOARD'S CONCLUSIONS AND ORDER

Based on the foregoing facts, the Board, in agreement with the Administrative Law Judge, found that the Company violated Section 8(a)(5), (3) and (1) of the Act by failing to reinstate four strikers immediately after their unconditional application for employment on June 13, 1974 and violated Section 8(a)(5) and (1) of the Act by refusing to bargain collectively in good faith with the Union as to the wages, hours and

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[6] In the Union's letter and in the complaint, the name of this individual was spelled "C-i-v-e-l-l-o." The correct spelling of the name, however, is as it appears *supra* (A. 13; 156, 159).

[7] In the Union's letter, this name appears as "Chimento" (A. 14; 56). The correct spelling appears *supra*.

[8] As shown *supra*, in the Board's decision in Case No. 29-CA-3596, those employees in the Company's production and maintenance unit who engaged in the strike beginning on July 2, 1973 were found to be unfair labor practice strikers (*supra*, p. 4). Cirillo, Santamaria, Gibaldi and Chimenti were employed by the Company before the strike and participated in it (A. 159-161). Mazzanti was an employee who was fired close to the time of the strike, for reasons unrelated to the strike (*supra*, pp. 7-8). As noted above, during collective bargaining negotiations between the Company and the Union, D'Angelo agreed that Mazzanti would be rehired along with the strikers (*supra*, pp. 7-8).

working conditions of its employees in an appropriate unit (A. 23). The Board further found that the Company violated Section 8(a)(5) and (1) of the Act by refusing to honor and comply with the terms of the collective bargaining agreement executed by its agent, Jack D'Angelo, on May 29, 1974 (A. 23). Contrary to the Administrative Law Judge, the Board found that the Company also violated Section 8(a)(5) and (1) of the Act by reneging on its May 29, 1974, agreement to reinstate employee Mazzanti (A. 30).

The Board's order requires the Company to cease and desist from the unlawful conduct found, and from in any other manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights (A. 25). Affirmatively, the Board's order requires the Company to recognize and bargain with the Union upon request; to comply with the terms and conditions of the May 29, 1974 contract both retroactively and for the balance of its term; to make whole all employees within the unit covered by that contract for any losses they may have suffered by virtue of the Company's refusal to honor that contract; to offer to T. Gibaldi and Vito Chimenti reinstatement with backpay; to make whole Antonio Cirillo and Gaspare Santamaria for any loss of earnings they may have suffered;[9] and to post the appropriate notices (A. 25-28).

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[9] As noted *supra*, Cirillo was reemployed during the week ending August 2 and Santamaria was reemployed during the week ending September 13 (A. 14; 162, 163).

ARGUMENT

I. SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE COMPANY VIOLATED SECTION 8(a)(5), (3) AND (1) OF THE ACT BY FAILING TO REINSTATE FOUR UNFAIR LABOR PRACTICE STRIKERS TO THEIR FORMER JOBS IMMEDIATELY AFTER THEIR UNCONDITIONAL APPLICATION TO RETURN TO WORK.

It is well-settled that unfair labor practice strikers do not lose their status as employees and are entitled to reinstatement with backpay, even if they have been replaced. *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270, 278 (1956); *N.L.R.B. v. Milco, Inc.*, 388 F.2d 133, 139 (C.A. 2, 1968). An employer who refuses to reinstate strikers is guilty of an unfair labor practice, unless " 'legitimate and substantial business justifications' " are shown (*N.L.R.B. v. Great Dane Trailers*, 388 U.S. 26, 34 (1967)) and the burden of proving justification is on the employer. *N.L.R.B. v. Fleetwood Trailer Co.*, 389 U.S. 375, 378 (1967).

As shown in the Statement, in *Adams I*, the Board found that the strike beginning on July 2, 1973, was an unfair labor practice strike and, accordingly, directed that the Company reinstate and make whole, upon their unconditional application, all employees who went on strike (A. 5-6; 73, 75). In a letter dated June 13, 1974, the Union, on behalf of the strikers made an unconditional application for the reinstatement, *inter alia*, of Antonio Cirillo, Gaspare Santamaria, T. Gibaldi, and Vito Chimenti. The Company never acknowledged the demand for reinstatement and made no effort to comply with the request (*supra*, p. 10). Cirillo and Santamaria were not reemployed until several months later and Gibaldi and Chimenti were never recalled (*supra*, p. 10). In the instant case, the Board found that in not offering immediate employment to Cirillo, Chimenti, Gibaldi, and Santamaria, as required by its earlier decision, the Company violated Section 8(a)(3) and (1) of the Act. The Board further

found that the Company's conduct also violated Section 8(a)(5) of the Act, inasmuch as the Company's course of conduct was attributable to the four employees' participation in the strike and the Company's purpose was to undermine the Union and destroy its status as the majority representative.[10]

Shortly after the Union's demand in behalf of the strikers, the Company hired two new employees. One, A. Perulli, was hired during the week ending June 28 (A. 14; 162).and the other, G. Fornarelli, was hired during the week ending November 8 (A. 14; 163). The Company offered no justification for its hiring of new employees while refusing to reemploy Gibaldi and Chimenti. Nor did the Company make any effort to show that it had no work available for the unfair labor practice strikers at the time of their application for reinstatement. In fact, the evidence is to the contrary, for at that time, the Company had three employees in the unit who were doing the same work that the strikers had performed.[11] The strikers were entitled to these positions, even though replacements had been hired. *Mastro Plastics Corp. v. N.L.R.B., supra,* 350 U.S. at 278; *N.L.R.B. v. L.E. Farrell Co.,* 360 F.2d 205, 208 (C.A. 2, 1966).

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[10] Although the Company did not specifically except to the Administrative Law Judge's findings with respect to the strikers, as required by Section 102.46(b) of the Board's Rules and Regulations, in light of its general exception to Paragraph 4 of the Administrative Law Judge's Conclusions of Law (A. 23), we treat this issue as the subject of a Company exception.

[11] Dominick Savona, who worked in the shop as an "inside" employee; C. La Marca, a truckdriver who also did repair and installation work; and Philip Savona, who did installation work (A. 14; 161-162). Before the strike, the four strikers named above had been performing the following work: Cirillo worked both inside the shop and outside on general installation work; Chimenti worked inside the shop at painting and as a general helper; and Gibaldi and Santamaria worked inside as general helpers (A. 14; 165-166). The Savonas and La Marca were not on the payroll at the time of the strike in July 1973 (A. 80). They were working for the Company during the week ending June 14, 1974 – that is, at the time of the demand for reinstatement (A. 161).

Thus, the Board properly found that in failing to reinstate them, the Company violated Section 8(a)(3) and (1) of the Act. *N.L.R.B v. Milco, Inc., supra,* 388 F.2d at 140.[12]

II. SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE COMPANY VIOLATED SECTION 8(a)(5) AND (1) OF THE ACT BY REFUSING TO HONOR AND COMPLY WITH THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT EXECUTED BY ITS AGENT ON MAY 29, 1974.

It is undisputed that on May 29, 1974, D'Angelo signed a collective bargaining agreement on behalf of the Company over a line designated, "Person authorized to sign." The Company contends that D'Angelo had no authority, express or implied, to sign a contract on its behalf and therefore it is not bound by the agreement. We show below that the Company, by its conduct during the period prior to that date, gave D'Angelo authority to execute this agreement and, therefore, is bound to abide by the contract.

Issues regarding agency raise essentially factual questions (*N.L.R.B. v. Donkin's Inn, Inc.*, __ F.2d __, 91 LRRM 3015 (C.A. 9, 74-3252, March 4, 1976)), and such determinations and the underlying inferences are for the Board and ought not be disturbed if supported by "substantial evidence on the record considered as a whole." *Local 349, International Brotherhood of Electrical Workers, AFL-CIO v. N.L.R.B.*, 357 F.2d 579, 580 (C.A.D.C., 1965). In this regard, Section 2(13) of the Act provides:

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[12] The evidence also fully supports the Board's finding that the Company's failure to reinstate the strikers was a violation of Section 8(a)(5) and (1) of the Act. The Board reasonably concluded that the Company's sole motive in refusing reinstatement to the four strikers was to reduce the number of Union adherents in the unit and thereby destroy the Union's status as majority representative, in order to avoid bargaining with the Union. Cf. *N.L.R.B. v. Goya Foods, Inc.*, 303 F.2d 442 (C.A. 2, 1962), cert. denied, 371 U.S. 911.

> In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his actions, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

The evidence shows that D'Angelo entered into negotiations for a contract with the Union at the direct request of Bonanno and that the Union was aware of this authorization. Bonanno, a naturalized American citizen with only a limited ability to speak English, asked D'Angelo, who was his personal friend, to help him with the negotiations because of his language difficulties (Tr. 200). On May 8, D'Angelo and Schonfeld spent a substantial amount of time in negotiations with Colavito and Schifano. After an abortive effort to replace D'Angelo with Gaba, Bonanno stated more than once to the Union officials that they should "work it out with Jack [D'Angelo]" (*supra*, p. 6). D'Angelo, in Bonnano's presence, suggested to the Union representatives, "Get those contracts to Schonfeld and as soon as [we] have a chance to look it over we will have another meeting" (A. 103). Bonanno himself testified that he had told Colavito on May 8 that he had asked D'Angelo "to help any way to see what deal could come out, give me a better deal, something [that would enable me] to survive, and then he come to me . . ." (A. 185). Later, he also told Colavito, "Talk to Jack, maybe you don't want to say to me something you want to say to him" (A. 186).

The record clearly indicates that D'Angelo was in consultation with Bonanno regarding the progress and substance of the negotiations. Although D'Angelo was an experienced businessman, he conceded that he had had no prior experience in negotiating labor agreements and was unfamiliar with the ironworks business (A. 201).[13] In light of his admitted

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[13] D'Angelo testified, for example, that he had no comprehension of the concession which the Union granted regarding the apprentice-journeyman ratio (A. 202-203).

unfamiliarity with collective bargaining negotiations, it is totally implausible that, without talking with Bonanno, he would have proposed at the meeting on May 29, that Bonanno be classified as a working foreman or that the life of the contract be extended from June 1975 to June 1977 (*supra*, p. 7). And as noted above, agreement was reached when the Union acceded to D'Angelo's additional demands. Cf. *N.L.R.B. v. Coletti Color Prints, Inc.*, 387 F.2d 298, 305 (C.A. 2, 1967).

After D'Angelo signed the contract on May 29, the Company made no protest that D'Angelo acted without authority until June 11, when the Company's new attorney, Ferlaino, made this argument in a letter to the Union (*supra*, p. 9). Five days after the execution of the contract, when Schifano visited the Company's premises, Bonanno did not raise this contention. Instead, he complained about D'Angelo's effectiveness, stating "the kind of contract that that guy signed . . . I could have gotten myself, I didn't need him" (*supra*, p. 8). He then reiterated his long-standing objection to having the Union act as the representative of more than half his employees. Thus, it is apparent that Bonanno's concern was, not that D'Angelo had acted without authority, but that he had executed a contract with which Bonanno was dissatisfied. Bonanno's position was wholly unreasonable, in light of the Union's acceptance of all the proposals put forward by D'Angelo. "An employer's duty to bargain under Section 8(a)(5) would be empty, indeed, if after reaching agreement the employer could treat the contract as a scrap of paper." *N.L.R.B. v. M & M Oldsmobile, Inc.*, 377 F.2d 712, 715-716 (C.A. 2, 1967). As the Ninth Circuit has stated, it "can [not] . . . permit negotiators charged with the ultimate responsibility of approving or rejecting collective bargaining agreements to remain mute in the presence of a negotiated accord and to later let them catch their tongues at a moment they deem most likely to frustrate the progress that has been made."

N.L.R.B. v. Industrial Wire Products Corp., 455 F.2d 673, 679 (C.A. 9, 1972), citing *N.L.R.B. v. Mayes Brothers, Inc.*, 383 F.2d 242, 246 (C.A. 5, 1967). By disavowing the contract after accord had been reached on the Company's own proposals, the Company clearly violated Section 8(a)(5) and (1) of the Act. *N.L.R.B. v. Gittlin Bag Co.*, 196 F.2d 158 (C.A. 4, 1952), cited with apparent approval in *N.L.R.B. v. Coletti Color Prints, supra*, 387 F.2d 298, 304 (C.A. 2, 1967). See also, *N.L.R.B. v. Nesen*, 211 F.2d 559 (C.A. 9, 1954), cert. denied, 348 U.S. 820.[14]

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[14] The Company also violated Section 8(a)(5) and (1) of the Act by refusing to reinstate Mazzanti. As indicated, *supra*, D'Angelo agreed on May 29 to reinstate Mazzanti (*supra*, pp. 7-8). On June 3, 1974, when Mazzanti returned to the Company's shop accompanied by Schifano, Company President Bonanno repudiated the agreement entered into by D'Angelo (*supra*, p. 8). As we have shown, *supra*, that D'Angelo had authority to bind the Company to the collective bargaining agreement executed on May 29, 1974, it follows that D'Angelo had similar authority to agree, on behalf of the Company to reinstate Mazzanti. Thus, the Company violated Section 8(a)(5) and (1) of the Act by reneging on its agreement.

CONCLUSION

For the foregoing reasons, we respectfully request that a judgment be entered enforcing the Board's order in full.

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National Labor Relations Board.

June 1976.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner,	)	
v.	)	No. 76-4051
ADAMS IRON WORKS, INC., Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned certifies that three (3) copies of the Board's offset printed brief in the above-captioned case have this day been served by first class mail upon the following counsel at the address listed below:

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/s/ Elliott Moore
Elliott Moore
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.

this 7th day of June, 1976.